

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 27, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 155**

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**Introduced by Assembly Member Mendoza**  
**(Principal coauthor: Assembly Member Torrico)**

**(Coauthors: Assembly Members Brownley, Coto, De Leon, Fuentes,  
Furutani, Krekorian, Lieu, Ma, Nava, John A. Perez, V. Manuel  
Perez, Price, and Yamada)**

**(Coauthor: Senator Wiggins Coauthors: Senators DeSaulnier, Liu, and  
Wiggins)**

January 26, 2009

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An act to amend Section 53760 of, and to add ~~Section 8860~~ Sections 8860, 8861, 8862, 8863, and 8864 to, the Government Code, relating to local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy proceedings.

Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.

This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature hereby finds and declares all of  
2     the following:

3     (a) *The California Constitution and current statutory law*  
4     *provide for a continuity and interdependence between state and*  
5     *local government entities. Seeking financial relief through the*  
6     *provisions of Chapter 9 (commencing with Section 901 of Title*  
7     *11) of the United States Code imposes costs on a municipality,*  
8     *potentially exceeding \$1 million. It can reduce service levels to*  
9     *the taxpayers and residents of a municipality. In some*  
10    *circumstances, it can have major short- and long-term fiscal*  
11    *consequences to the municipality, the surrounding local public*  
12    *entities, and the state. In 2009, bond counsel stated that “filing*  
13    *for bankruptcy protection under Chapter 9 should be considered*  
14    *a last resort, to be effected only after every effort has been made*  
15    *to avoid it.”*

16    (b) *The Legislature has an interest in monitoring the conditions*  
17    *under which local entities seek Chapter 9 protection. The relief*  
18    *provided through the federal courts can affect state and municipal*  
19    *government service levels, debt, and contracts. The Legislature*  
20    *also has a strong interest in ensuring adequate disclosure of the*  
21    *conditions under which a municipality may seek Chapter 9*  
22    *protection.*

23    (c) *To the extent financial relief granted through Chapter 9 can*  
24    *affect debt service payments, the state’s investors and bondholders*  
25    *have a direct interest in the Bankruptcy Court’s decisions.*

26    (d) *The state has established a statewide system of public*  
27    *employee collective bargaining for state and local government*  
28    *employers and employees intended to protect the state’s interest*  
29    *in promoting peaceful and harmonious labor relations and*  
30    *preventing work stoppages. The validity and enforceability of*  
31    *contracts arrived at through collective bargaining are essential*  
32    *to maintaining labor peace and the uninterrupted delivery of vital*  
33    *public services, and these agreements may be subject to review*  
34    *and amendment or rescission in the event of a Chapter 9*  
35    *bankruptcy proceeding.*

36    (e) *The state has established and administers statewide pension*  
37    *systems that provide retirement and health benefits to state and*  
38    *local agency employees, many of whose benefits rely on contracts*

1 *negotiated between local agencies and the California Public*  
2 *Employees' Retirement System, and that may be subject to review*  
3 *and amendment or rescission in the event of a Chapter 9*  
4 *bankruptcy proceeding.*

5 ~~(a)~~

6 (f) California is one of only 12 states that grants blanket  
7 authority for its municipalities to petition for bankruptcy and offers  
8 no opportunity for its municipalities to receive state-level,  
9 prebankruptcy guidance, oversight, or assistance for those  
10 jurisdictions that are truly insolvent and face no other alternative  
11 to bankruptcy.

12 ~~(b) The costs of municipal financial default are borne by the~~  
13 ~~state as a whole, including every California taxpayer.~~

14 ~~(c)~~

15 (g) State intervention in local affairs should only occur in  
16 exceptional circumstances and not without a compelling interest  
17 of statewide concern.

18 ~~(d)~~

19 (h) Given the connection between state allocations and local  
20 budgets, the state has a role in mitigating possible local bankruptcy.

21 ~~(e)~~

22 (i) It is the duty of all state and local elected officials to ensure  
23 that governments provide essential services to the communities  
24 they are elected to serve.

25 ~~(f)~~

26 (j) California's taxpayers who rely on public safety, senior,  
27 park, and library services, as well as those who own and operate  
28 businesses in our communities deserve every effort that state and  
29 local government can make to avoid the long-term devastation of  
30 bankruptcy.

31 ~~(g)~~

32 (k) ~~The California Debt and Investment Advisory Commission,~~  
33 ~~as established by the Legislature in 1981, Commission~~ is the  
34 appropriate body to provide the expert oversight and guidance  
35 sought by local public agencies who find themselves in a fiscal  
36 crisis, given its current statutory duties to collect municipal finance  
37 data, conduct research, administer educational seminars, and  
38 provide information and technical assistance on behalf of local  
39 public agencies and their finance professionals, and given the

1 commission's diverse membership that includes state and local  
2 government financial experts.

3 SEC. 2. Section 8860 is added to the Government Code, to  
4 read:

5 8860. (a) The commission shall, upon request of a local public  
6 ~~agency~~ entity, advise and, if deemed appropriate by the  
7 commission, grant approval to the ~~agency~~ entity to exercise its  
8 rights pursuant to Section 53760, which may include conditions  
9 prescribed by the commission.

10 (b) Upon request under subdivision (a), the local public ~~agency~~  
11 entity shall submit all of the following to the commission:

12 ~~(1) A proposed plan for restructuring debt and other financial~~  
13 ~~obligations to avoid a fiscal crisis.~~

14 *(1) A resolution or ordinance, adopted by that governing body*  
15 *at a public hearing held pursuant to the Ralph M. Brown Act*  
16 *(Chapter 9 (commencing with Section 54950) of Part 1 of Division*  
17 *2 of Title 5), that does both of the following:*

18 *(A) Requests authority pursuant to Section 53760 to petition*  
19 *the federal bankruptcy court for financial relief under the*  
20 *provisions of Chapter 9 (commencing with Section 901 of Chapter*  
21 *11) of the United States Code.*

22 *(B) Acknowledges that the state's fiscal and financial*  
23 *responsibilities are not changed by the application or the*  
24 *commission's decision pursuant to Section 8861.*

25 *(2) A thorough analysis of the entity's request to petition under*  
26 *Chapter 9 (commencing with Section 901 of Title 11) of the United*  
27 *States Code. In addition to any other information it may provide,*  
28 *the entity shall do all of the following:*

29 *(A) Demonstrate that it is or will be unable to pay its undisputed*  
30 *debts.*

31 *(B) Demonstrate that it has exhausted all options to avoid*  
32 *seeking relief under Chapter 9.*

33 *(C) Detail a specific plan for restoring the soundness of the*  
34 *entity's financial plans.*

35 ~~(2)~~

36 (3) An itemization of creditors that may be impaired or may  
37 seek damages as a result of the proposed ~~restructuring~~ plan.

38 ~~(3) Any and all supporting documentation that the local public~~  
39 ~~entity deems appropriate in support of the stated fiscal crisis or as~~

1 requested by the commission, that may be required to perform a  
2 desk audit.

3 (c) *The local entity may request, and the commission chair may*  
4 *approve, an expedited evaluation. The commission chair may*  
5 *approve the expedited evaluation if the entity sufficiently*  
6 *demonstrates a need for improved cashflow or protection from*  
7 *creditors claims. If the request is approved, the expedited*  
8 *evaluation shall be completed within 5 days.*

9 (e)

10 (d) Upon receipt of the information required by subdivision (b),  
11 the commission shall ~~do all that it deems necessary to evaluate the~~  
12 ~~fiscal condition of the local public agency, including, but not~~  
13 ~~limited to, reviewing the submission and recommending specific~~  
14 ~~action to be taken by the public agency to avert fiscal insolvency.~~

15 (d) ~~Any recommendations released, or approvals granted, by~~  
16 ~~the commission shall be conducted in a noticed public hearing.~~  
17 *evaluate the information presented and publish its evaluation*  
18 *within 30 business days, or, in the case of an expedited request*  
19 *pursuant to subdivision (c), within 5 days. In conducting its*  
20 *evaluation, the commission staff shall specifically evaluate the*  
21 *extent to which the local public entity has done the following:*

22 (1) *Demonstrated that it has exhausted other remedies.*

23 (2) *Demonstrated that it has taken sufficient steps to reduce the*  
24 *negative consequences of its proposed bankruptcy relief.*

25 (3) *Has anticipated the transfer of service responsibility to other*  
26 *governments or parties and to what extent the entity has*  
27 *documented the consequences for the transfer of municipal and*  
28 *other government services.*

29 (4) *Documented the likely effect a successful petition will have*  
30 *on state and local finances, including the impact on credit access*  
31 *and debt service.*

32 (5) *Has proposed a remedy that is appropriate and*  
33 *proportionate to the entity's fiscal problems.*

34 (e) *The commission shall conduct a hearing and publish a*  
35 *decision within 15 days of, but not less than 10 days after, the*  
36 *publication of the staff evaluation conducted pursuant to*  
37 *subdivision (d). The hearing shall be conducted according to the*  
38 *provisions of Section 8861. The commission hearing on the*  
39 *application shall be held in convenient proximity of the entity filing*  
40 *the application.*

1     (f) A governing board of a local public entity may reapply if its  
2     request was denied pursuant to Section 8861. In making the  
3     reapplication, the local public entity shall adopt another resolution  
4     and submit documentation to address the deficiencies identified  
5     by the commission pursuant to Section 8861.

6     ~~(e)~~

7     (g) As used in this ~~section~~, chapter, “local public entity” means  
8     any city, county, city and county, district public authority, public  
9     agency, or other entity that is a “municipality” within the meaning  
10    of paragraph (40) of Section 101 of Title 11 of the United States  
11    Code, or that qualifies as a debtor under any federal bankruptcy  
12    law applicable to local public entities.

13    SEC. 3. Section 8861 is added to the Government Code, to  
14    read:

15    8861. (a) The commission shall hold a public hearing to  
16    consider a request made pursuant to Section 8860. The hearing  
17    shall provide sufficient time for public testimony.

18    (b) The commission shall, in a recorded vote, approve or deny  
19    the request.

20    (c) If the commission approves a request, it may order the entity,  
21    as a condition of approving the request, to limit the nature and  
22    extent of relief provided through Chapter 9 bankruptcy  
23    proceedings, including all of the following:

24    (1) The commission may limit the changes to a contract.

25    (2) The commission may prohibit the abrogation of contracts.

26    (3) The commission may limit the amount of relief to ensure the  
27    protection of debt service payments.

28    (d) If the commission disapproves a request, the commission  
29    shall adopt specific findings that address the deficiencies of the  
30    application.

31    (e) The hearing shall be subject to the provisions of the  
32    Bagley-Keene Open Meeting Act (Article 9 (commencing with  
33    Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At  
34    the same time that the notice and agenda for the hearing is posted  
35    to comply with the requirements of the Bagley-Keene Open Meeting  
36    Act, then the commission shall do all of the following:

37    (1) Post the notice in a location in the entity that is freely  
38    accessible to members of the public.

39    (2) Deliver the notice personally, by United States mail, or by  
40    facsimile transmission, to each local newspaper of general

1 *circulation whose circulation area reasonably includes the local*  
2 *public entity.*

3 *(3) Deliver the notice by United States mail, or by facsimile*  
4 *transmission, to each radio or television station that has requested*  
5 *notice in writing.*

6 *(4) Request publication of the notice in the daily file of each*  
7 *house of the Legislature at least 24 hours prior to the date of the*  
8 *meeting, if the Legislature is in session.*

9 *SEC. 4. Section 8862 is added to the Government Code, to*  
10 *read:*

11 *8862. (a) After the commission receives a request pursuant to*  
12 *Section 8860, the executive director shall record costs incurred*  
13 *by the commission to make and publish the evaluation pursuant*  
14 *to Section 8860 and conduct the hearing required under Section*  
15 *8861. The director shall report those costs to the commission at*  
16 *the next regularly scheduled commission hearing.*

17 *(b) Upon denial of the request, the executive director or*  
18 *commission may assess the requesting entity a fee to cover some*  
19 *or all the costs associated with making the findings and conducting*  
20 *the hearing. Fee revenue shall be deposited in the California Debt*  
21 *and Investment Advisory Commission Fund.*

22 *(c) The commission may propose regulations to govern the*  
23 *request and review process required under Sections 8860 and*  
24 *8861.*

25 *SEC. 5. Section 8863 is added to the Government Code, to*  
26 *read:*

27 *8863. In enacting Sections 8860, 8861, 8862, and the changes*  
28 *in Section 53760, the state assumes no new or additional fiscal*  
29 *responsibilities for local entities that may apply to the commission*  
30 *for review pursuant to this chapter.*

31 *SEC. 6. Section 8864 is added to the Government Code, to*  
32 *read:*

33 *8864. This chapter shall only apply to a local public entity on*  
34 *or after the effective date of this chapter.*

35 ~~*SEC. 3.*~~

36 *SEC. 7. Section 53760 of the Government Code is amended*  
37 *to read:*

38 *53760. (a) Except as otherwise provided by statute, a local*  
39 *public entity in this state may, with the approval of the California*  
40 *Debt and Investment Advisory Commission, under the terms and*

1 conditions that the commission may impose pursuant to Section  
2 ~~8860~~ 8861, file a petition and exercise powers pursuant to  
3 applicable federal bankruptcy law.

4 (b) As used in this section, “local public entity” means any  
5 county, city, district, public authority, public agency, or other  
6 entity, without limitation, that is a “municipality,” as defined in  
7 paragraph (40) of Section 101 of Title 11 of the United States Code  
8 (bankruptcy), or that qualifies as a debtor under any other federal  
9 bankruptcy law applicable to local public entities.